

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RASHAWN HARRIS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 2:14-cv-1226

JUDGE GREGORY L. FROST

Magistrate Judge Norah McCann King

OPINION AND ORDER

This action seeks review under 42 U.S.C. § 405(g) of a decision by Defendant, the Commissioner of Social Security, that denied applications for disability benefits and supplemental security income filed by Plaintiff, Rashawn Harris. In a Report and Recommendation, the Magistrate Judge recommended that the Court remand the action pursuant to sentence six of 42 U.S.C. § 405(g) for consideration of new and material evidence. (ECF No. 20, at Page ID # 910.) The matter is now before the Court for consideration of Defendant's objections (ECF No. 25) and Plaintiff's response (ECF No. 27).

I. Discussion

A. Standard Involved

If a party objects within the allotted time to a report and recommendation, the Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

B. Analysis

In her May 15, 2015 Report and Recommendation, the Magistrate Judge addressed the parties' numerous issues, with the issue of new and material evidence proving dispositive. The Magistrate Judge summarized at length evidence that arose after the March 29, 2013 administrative decision and concluded that this evidence was both material to Plaintiff's disability claim and warranted a sentence six remand. Defendant objects to this reasoning and the remand.

The Magistrate Judge properly addressed and disposed of the bulk of Defendant's arguments in the Report and Recommendation. Defendant has incorporated those arguments by reference in the objections, and this Court, after *de novo* review, similarly incorporates by reference the Magistrate Judge's dispositive rationale. The core objection that remains is Defendant's contention that the Magistrate Judge erred because no evidence suggests that the problems involved in the new evidence began before March 30, 2013. Defendant posits that Plaintiff's April 19, 2013 injury was the only catalyst for the pain and consequent procedures. Thus, Defendant reasons, the April 2013 injury cannot be regarded as reasonably proving that the administrative law judge erred in assessing Plaintiff's functional capabilities in March 2013.

This Court understands Defendant's position but disagrees. The record is replete with evidence of Plaintiff's pre-existing back pain and, as the Magistrate Judge correctly concluded, the new evidence of a severe back impairment is sufficiently related to the pre-existing back impairment so as to warrant a remand. Although there is certainly not a definitively established correlation as Defendant notes, the evidence currently before this Court suggests but does not conclusively establish that Plaintiff's later problems are simply the continuation or evolution of the precise prior impairments. There is at least a reasonable probability both that this suggestion

is accurate and that the new evidence would therefore have affected the outcome of the proceeding. The degree to which the new evidence ultimately informs the disability determination, if at all, is an open issue on remand to be resolved by the administrative law judge.

II. Conclusion

The Court **OVERRULES** Defendant's objections (ECF No. 25), **ADOPTS** and **AFFIRMS** the Report and Recommendation (ECF No. 20), and **REMANDS** the action pursuant to sentence six of 42 U.S.C. § 405(g) for further consideration of the new, post-March 2013 evidence. The Clerk shall enter judgment accordingly and terminate this action on the docket records of the United States District Court for the Southern District of Ohio, Eastern Division.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE